

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID WEST and SALLY
McCLANAHAN,

Plaintiff(s)

No. C 05-3983 (WDB)

PRE-TRIAL ORDER
(Jury Trial)

v.

PFIZER, INC., et al.,

Defendant(s).

On August 8, 2006, the court held a case management conference in the above-captioned case. For reasons set forth on the record, the court hereby **ORDERS** the following:

1. The jury trial shall begin on **Tuesday, January 23, 2007**, at **8:30 a.m.**, in Courtroom 4, Third Floor, United States Courthouse, 1301 Clay Street, Oakland, California.

2. On **Thursday December 7, 2006**, at **3:00 p.m.**, the court will hold a hearing on any dispositive motions.

3. On **Wednesday, January 10, 2007**, at **1:30 p.m.**, the court will hold the final pretrial conference. Lead trial counsel for each party must participate in the

1 conference. The conference may be held telephonically if the parties desire, in
2 which case plaintiff must notify the court by 4:00 p.m. the day before the
3 conference. Plaintiff must initiate a conference call at the time noticed and call the
4 court at (510) 637-3326 when all parties are on the line.

5 6 **DISCOVERY**

7 4. The discovery cut-off date for all discovery (including that with respect
8 to expert witnesses) is **December 4, 2006**. Discovery cut-off date is defined in
9 Civil Local Rule 26-2. No motions to compel discovery may be filed later than 10
10 days after the discovery cut-off date.

11 12 **MEET AND CONFER**

13 5. Not less than **30 days** prior to the date of the Final Pretrial Conference,
14 the parties must meet and take all steps necessary to fulfill the requirements of this
15 order.

16 17 **WITNESSES AND DEPOSITION TESTIMONY**

18 6. No less than **15 court days** before the final pretrial conference, each
19 party must file, serve, and separately lodge with chambers a list of witnesses it
20 intends to call on direct examination, in the order that the party expects to call
21 them, with a brief description of the subject areas upon which each witness will
22 testify, a description of the significance (in terms of factual propositions and/or
23 legal theories) of the expected testimony, and an estimate of the time that direct
24 examination will consume. Each party also must file and serve, with its witness
25 list, excerpts from the deposition testimony of witnesses not testifying in person
26 that may be presented at trial, specifically reproducing the pages and marking the
27 lines of the relevant transcript excerpts. Two copies of the witness list and
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1 deposition excerpts must be lodged directly with chambers. (Full deposition
2 volumes should not be lodged with the court.)

3 7. The parties will be precluded from offering substantive evidence (i.e.,
4 evidence offered for any purpose other than impeachment) by live testimony
5 through any person not listed on the witness list or by deposition testimony not
6 included in the submitted excerpts, and will be precluded from supplementing the
7 witness list or the deposition excerpts after the deadline set herein for exchanging
8 this material, except upon the express permission of the court. The court will
9 permit the testimony of persons not designated in the witness list or the use of
10 deposition excerpts not timely disclosed only upon a substantial showing that: (a)
11 no party will be prejudiced or suffer undue hardship, (b) the failure to timely
12 designate the witness or testimony was clearly justified, and (c) the interests of
13 justice otherwise warrant permitting the testimony.

14 8. Counsel ordinarily will be permitted at trial to present foundational
15 matter and factual evidence describing the educational and employment
16 background of witnesses in summary, leading form.

17 **EXHIBITS**

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19 9. No less than **15 court days** before the final pretrial conference, counsel
20 must **exchange** all exhibits (premarked), including demonstrative exhibits, that
21 they intend to use as part of their case-in-chief at trial.

22 10. Except for purposes of impeachment, the parties will be precluded from
23 offering in evidence, using as demonstrative evidence, or examining any of their
24 witnesses concerning any exhibit not exchanged by this deadline, except upon the
25 express permission of the court. The court will permit supplementation of exhibits
26 after the exchange date only upon a substantial showing that: (a) no party will be
27 prejudiced or suffer undue hardship, (b) the failure to timely designate the exhibit
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1 was clearly justified, and (c) the interests of justice otherwise warrant the
2 supplemental designation.

3 11. The court has attached to this Order the form of exhibit labels to be
4 used by each side. Each side should label their exhibits prior to trial. Plaintiffs
5 must label their exhibits numerically as follows: "P-1, P-2, etc" Defendants
6 must label their exhibits numerically as follows: "D-1, D-2, etc. . . ." Counsel
7 must not write in the space provided for "date entered" or "signature." The court
8 has also attached to this Order an example of an "Exhibit List." Each party must
9 create an Exhibit List that is substantially similar to the attached form and, prior to
10 trial, must list the number of each exhibit the party intends to offer at trial and
11 briefly describe each such exhibit.

12 12. No less than **2 court days** before the start of **trial**, each party must
13 deliver to chambers, in looseleaf binders, a sufficient number of complete sets of
14 all documentary exhibits to ensure that the judge, his law clerk, and each juror will
15 have their own set of documentary exhibits during trial. These sets are in addition
16 to exhibits counsel will officially submit to the courtroom deputy at trial and any
17 copies of exhibits counsel will want to show witnesses on the stand. All exhibits
18 must be premarked for identification according to the system set forth herein.

19 20 EVIDENTIARY MOTIONS

21 13. No less than **12 court days** before the final pretrial conference, counsel
22 must meet and confer to resolve any objections to the use of witnesses, deposition
23 excerpts, and/or exhibits.

24 14. The court will entertain foundational objections as to any document
25 only if (1) the document is of real significance in adjudicating the merits of the
26 case and (2) objecting counsel articulates a principled basis for believing that the
27 document is not what it purports to be.
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1 15. If, **after meeting and conferring**, a party continues to object to the
2 admission of evidence on either of the following foundational grounds: (1) the
3 authenticity of a document or exhibit, or (2) the qualifications of expert witnesses,
4 the objecting party may file a motion to exclude the evidence, along with any other
5 motions in limine.

6 16. All motions in limine, including those referred to in paragraph 15, must
7 be filed, served and lodged separately with chambers no less than **10 court days**
8 before the final pretrial conference. Failure to file a timely objection may waive a
9 party's right to challenge the admissibility of evidence at trial.

10 17. No less than **5 court days** before the final pretrial conference,
11 oppositions to evidentiary motions must be filed, served, and separately lodged
12 with chambers. No replies are to be filed.

13 14 **VOIR DIRE**

15 18. Counsel must meet to prepare a **joint** set of voir dire questions.

16 19. No less than **10 court days** before the final pretrial conference, the
17 parties must file **jointly** a set of voir dire questions they would propose the court
18 to ask. (Note: The court has attached to this order a short list of basic questions
19 which the court will ask the potential jurors in open court.) The parties also must
20 deliver a copy of the proposed voir dire questions directly to chambers. The
21 parties also must describe any request to conduct limited voir dire by counsel,
22 setting forth each proposed question and justifying why the question should be
23 asked by counsel rather than the court.

24 20. Proposed voir dire questions about which the parties cannot agree also
25 must be set forth in the parties' **joint** submission. In the parties' **joint** submission,
26 (1) the proponent of the question must set forth succinctly the basis for his or her
27 request that the question be asked, with citation to authority, and immediately
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thereafter, (2) the party opposing use of the question must set forth succinctly the basis for his or her opposition, with citation to authority.

JURY INSTRUCTIONS

21. Counsel must meet to prepare a **joint** set of case-specific jury instructions.

22. No later than **15 court days** before the final pretrial conference, the parties must file their **joint** set of proposed **case-specific** jury instructions. The parties also must deliver two copies of the proposed jury instructions directly to chambers. The parties must not submit generic instructions; the court uses the instructions approved by the Ninth Circuit for these purposes.

23. Proposed jury instructions about which the parties cannot agree also must be set forth in the parties' **joint** submission. In the parties' **joint** submission, (1) the proponent of the instruction must set forth succinctly the basis for his or her request that the instruction be given, with citation to authority, and immediately thereafter, (2) the party opposing use of the instruction must set forth succinctly the basis for his or her opposition, with citation to authority.

JOINT PRETRIAL STATEMENTS

24. Counsel must meet to prepare a **joint** pretrial statement. The parties must file the **joint** pretrial statement no later than **15 court days** before the final pretrial conference. Counsel also must deliver two copies of the statement directly to chambers. The joint pretrial statement must contain the following information:

- a. a succinct chronological description of the alleged events and circumstances out of which the parties' claims and defenses arise;
- b. a brief description of the substance of claims and defenses that remain to be decided, citing the primary sources of legal authority for each such claim or defense;

- 1 c. a statement of the relief requested, itemizing the elements of damages
2 claimed;
3 d. a statement of any stipulations proposed for pretrial and trial
4 purposes.
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6 **PRESENTATION TIME LIMITS**

7 25. Counsel are advised that at the final pretrial conference the court will
8 impose time limitations on each side's presentation at trial. Usually, the court
9 imposes "over-all" limits on each side (e.g., 12 hours each), meaning that each
10 party may use the allotted time in whatever manner the party chooses, *e.g.*, making
11 an opening statement, conducting direct and cross-examination, entering
12 documents, performing demonstrations, making closing argument, etc.
13 Accordingly, counsel must attempt to generate a joint proposal with respect to
14 what amount of time will be necessary to present this case, and must be prepared
15 to justify their proposal(s) at the final pretrial conference.

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SETTLEMENT

26. The court REFERS this matter for assignment to a Magistrate Judge to conduct a settlement conference during the first two weeks of October 2006.

27. The court strongly encourages the parties to continue discussing settlement of the case, exploring in good faith all reasonable settlement options.

IT IS SO ORDERED.

DATED: August 9, 2006

/s/ Wayne D. Brazil
Wayne D. Brazil
United States Magistrate Judge

Copies to:
All parties
WDB, Stats,
Wings